

STATE REPRESENTATIVE  
23rd DISTRICT  
SHERRY APPLETON  
DEMOCRAT ASSISTANT WHIP

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December 9, 2005

The Honorable Rob McKenna  
Attorney General, State of Washington  
1125 Washington Street SE  
Olympia, WA 98504-0100

Dear Attorney General McKenna,

I write to you today asking you to consider and adopt my recommendations for the Proposed Model Rules for public records your agency is in charge with implementing.

Under the Judicial Review section of the proposed WAC 44-14-08004 (7) it states:

A daily penalty of between five dollars to one hundred dollars must be awarded to a prevailing requestor, regardless of an agency's "good faith." An agency's "bad faith" can warrant a penalty on the higher end of this scale. The penalty is per day, not per-record per-day.

The language of the prevailing party shall be granted a daily penalty "regardless of an agency's good faith" is of concern to me. An agency who is acting in good faith to accommodate a public disclosure request would be penalized similarly to an agency that acts in bad faith or refuses to honor the request based on their interpretation of the statute. There is now no incentive for an agency to act in good faith. I do think should an agency be found to have acted in good faith, only reasonable attorney fees should be awarded to the prevailing party but not daily penalty fines or assessments.

I would very much like to see this part of the proposed rule changed. I would also appreciate hearing back from you on my comments before the public hearing on January 12<sup>th</sup>, 2006.

Sincerely,

Sherry Appleton  
State Representative, 23<sup>rd</sup> District

cc: Greg Overstreet, Special Assistant Attorney General for Government Accountability